

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	14-NOI-01
Notice of Inquiry regarding retail)	
electric market issues)	

**THIRD-ROUND COMMENTS ON BEHALF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association (“ICEA”) appreciates the opportunity to provide Third-Round Comments to the Illinois Commerce Commission (“ICC” or “Commission”) regarding the above-referenced Notice of Inquiry (“NOI”) that has been initiated by the Commission regarding retail electric market issues. ICEA appreciates the ongoing dialogue and the opportunity to be an active participant.

Because of the maturing state of the dialogue, ICEA will not respond to every argument made by other parties in Reply Comments. ICEA provided substantial Initial Comments on November 6, 2014 and Reply Comments on December 3, 2014, and incorporates those comments into the Third-Round Comments below. Unless otherwise noted below, nothing raised by other parties in comments or orally during the workshop process has caused ICEA to alter the positions stated in ICEA’s Initial Comments or Reply Comments. In addition, to the extent not explicitly proposed or supported in ICEA’s Comments, ICEA does not support recommendations made by other parties and ICEA’s silence should not be construed as acquiescence. To the extent any party requests clarification on ICEA’s position on a topic ICEA does not address, ICEA is happy to clarify during a workshop or in future rounds of comments.

I.

INTRODUCTION AND BACKGROUND

ICEA is an Illinois-based trade association organized to represent the interests of competitive energy suppliers, including licensed Alternative Retail Electric Suppliers (“ARES” or “RES”), in preserving and enhancing opportunities for customer choice and competition in the electric and natural gas industries in Illinois. ICEA’s members are some of the most active and largest competitive energy suppliers both in Illinois and nationally, and include ARES that serve residential, municipal aggregation communities, commercial, industrial and public sector customers.¹

The Commission’s Office of Retail Market Development has collected two rounds of comments and held two workshops (on November 13, 2014 and December 8, 2014) in this NOI proceeding. As ICEA has previously noted, , devising meaningful improvements to the Illinois residential power market and residential customer experience is not possible without first obtaining a clear understanding of how the market is functioning and intended to function at the present time. Although ICEA does not necessarily agree with the viewpoints of every other party as to the current state of the market, ICEA does appreciate the different perspectives as to how well the current market is functioning.

To further that discussion, ICEA wishes to set out its view of the current state of the competitive retail market for residential customers. As the active participants in this NOI are well aware, Illinois has had an unprecedented (outside of Texas) expansion of residential switching to competitive retail suppliers. According to the ORMD’s 2014 Annual Report, “As of May 31, 2014, more than three million residential customers across the state receive their

¹ Each member of ICEA expressly reserves the right to present its own individual position during the course of this inquiry. ICEA members include: Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Homefield Energy, Inc.; NextEra Energy Services, and Verde Energy Illinois-USA.

power from an ARES, an increase of approximately 153,000 from a year earlier.” (ORMD 2014 Annual Report at 3.)

In ICEA’s view, the current state of the residential electricity market is similar to mobile phones just before the advent of the iPhone and when the Blackberry was a business tool: the technology is falling into place to bring unprecedented new products and services to residential electric customers.

In addition, customers are learning to shop for the best deals to match their preferences in electricity, taking into account not only price but other value added factors. As the ORMD 2014 Annual Report noted: “The share of residential aggregation customers was 73.7% of all residential ARES customers in May 2014. This is down from close to 78% a year earlier.” (*Id.* at 19.) ICEA gleans from this statistic that—although still important—aggregation is hardly the only way that residential customers choose a supplier. As residential customers get more and more used to shopping and express preferences by buying different products, the market will adjust, providing more of the favored products and less of the products that do not sell over the long term.

Although the price of energy in any given month is certainly one factor influencing a customer’s buying decision, for many residential consumers it is not the only factor. From customer service experience to price stability to green products to deals on hardware upgrades (such as a smart device or solar panels), the millions of residential customers across Illinois in the Ameren and ComEd service territories have a range of options from which to choose. . Even when it comes to price, some customers may prefer the hands-on risk/reward of a rate that changes—whether month-to-month or hour-to-hour—while others may prefer the peace of mind of a fixed rate.

Unlike regulated utilities, retail electric suppliers must learn their residential customers' preferences and deliver on those preferences in order to survive. Thus, in ICEA's view, it is critical that any new or revised consumer protections foster the trends ICEA noted above and not hinder the development of new product offerings. Of course, as ICEA has previously noted in its Initial Comments and Reply Comments, as well as orally during workshops, accurate information to consumers is absolutely critical to proper functioning of the marketplace. To that end, ICEA presented several definitions, in its Initial and Reply Comments, which boil down to the following basic principle:

- If a residential customer's rate is based on a publicly available index (ranging from a NYMEX-pegged monthly rate to an hourly rate based on PJM/MISO hourly prices), then the residential customer should be told the formula; or
- If the residential customer is not told the formula (such as a Fixed Rate product, or Non-Index Variable Product as identified in ICEA's previous Comments), the customer should be given sufficient advance notice of any price changes to switch to a different supply choice if the residential customer desires.

ICEA also noted that switching times should be reduced so that customers with accurate information and pricing signals can act more quickly to take advantage of such information.

Although ICEA has stressed that the definitions are not intended to stifle innovation and should not be used to do so, ICEA's definitions and the underlying principle apply equally to dynamic rates as to rates that could be offered with analog meters. For instance, if a RES offers a TOU rate where the peak and off-peak rates are set for the year (or, for instance, summer/non-summer), then a consumer would likely consider such an offering to be a Fixed Price product. If a RES offered a summer-month product that was based on day-ahead LMPs in a way that customers could calculate the rate themselves, consumers would reasonably view such an offering to be a Variable Index Product.

Other parties have presented different views on the state of the retail competitive market in Illinois, and as a result have come to very different conclusions about the next steps forward. On one end of the spectrum, some participants apparently believe that the current market rules and definitions provide ample information to consumers (and ability to act on that information) and no additional changes are needed. On the other end, CUB believes that consumers need far more information and protections. ICEA disagrees with both characterizations, and for the reasons below recommends against the next steps suggested by these parties.

II.

RESPONSES TO REPLY COMMENTS

A. Response to CUB

Throughout its existence, ICEA has supported both the creation and effective use of properly designed consumer protection rules. Deceptive marketing practices should never be tolerated. Not by this Commission, and not by any of the retail electric suppliers certificated to operate in Illinois. In addition to the existing tools that individual consumers and the Commission (and third parties like CUB and the Attorney General) have to address the behavior of bad actors, ICEA provided an additional “One Star ARES” proposal in its Initial Comments. Despite repeated attempts to solicit engagement, ICEA has not heard from any consumer advocates about its One Star ARES proposal.

ICEA understands CUB’s issues to go beyond just deceptive marketing practices, however, and to the question of residential customers’ understanding of retail offerings. As an initial matter, ICEA continues to note that residential switching is a relatively new phenomenon—again like cell phones, there may be a learning curve for some residential customers to understand how to maximize their own preferences in the retail market. As noted

above, ICEA believes the customer education (through experience) is taking place in part on its own; ICEA encourages consumer advocates to supplement this experience with accurate information about switching. ICEA's definitions (and the underlying principle) provide another tool to help customers understand their options—and to evaluate those options on a consistent basis.

Unfortunately, CUB has made suggestions that would harm RES's ability to provide the range of products that might appeal to residential customers. First, CUB seeks for ARES to provide irrelevant (and perhaps nonexistent) information about historical variable prices. (*See* CUB Reply at 1.) Second, CUB recommends modifying POR in a way that could prevent many suppliers from offering variable (including dynamic) rates. (*See* CUB Reply at 2.) Third, CUB proposed that electricity (supply) from renewable resources be disclosed separately from RECs purchased. (*See* CUB Initial Comments at 5.)

1. CUB's Suggestion to Disclose Historical Rates Will Not Help Consumers

CUB states in its Reply Comments that: "a disclosure of historic variable prices charged over the last twelve months to customers of the supplier on variable rate plans would be a valuable disclosure to new or potential customers of variable rate plans." (CUB Reply at 1.) CUB's proposal would require that:

[A] supplier would mail either electronically or by US Postal Service (at the customer's direction) a notice of the variable nature of a the consumers contract, including the following information: the customer was now going to be on a Variable Rate; the length of the contract term and how often variable price will change; a chart showing the highest and the lowest rate charged by the supplier to customers on variable rate plans for the pervious twelve months; and the Illinois Power Agency price to compare every month for same time period.

(*Id.*) ICEA notes that disclosing the terms of a variable rate are already required pursuant to Section 412.110 of the Commission's Rules. (*See, e.g.*, 83 Ill. Admin. Code §§ 412.110(d), (e), and (o).) This existing rule addresses every suggestion above by CUB except for providing the

chart of rates and the Price-to-Compare; ICEA discussed the problems with the chart and Price-to-Compare in its Reply Comments. (*See, e.g.*, ICEA Reply Comments at 10-12, 15-16 (historical price information not useful, does not necessarily exist), 17-18 (problems with the Price-to-Compare).)

CUB appears to want to treat RES Variable Non-Index rates like utility rates. Utility rates are one-size-fits-all cost-based rates, and have the exact same terms and conditions for all users. RES products—even those without value added like solar panels or smart devices—bring with them the RES’s unique attributes, ranging from customer service to special offers. A RES can modify any aspect of a given product (provided it complies with Illinois law and regulations) to acquire or retain customers. The historical Price-to-Compare (utility rate) information is confounding enough for the residential consumer, with fluctuations that can be described only when taking into account the Illinois Power Agency’s procurement structure, legislative mandates, and market conditions. An historical RES price—which incorporates market issues along with many other pressures—does not tell the story of whether a current or future RES price is a good deal today or tomorrow. For example, no amount of historical RES data could have anticipated the 2014 Polar Vortex during the summer of 2013 or PJM’s decision to alter its own market rules in response.

ICEA respectfully suggests that with a combination of ongoing education, ICEA’s definitions (and the implications of the definitions, such as advance notice for Non-Index Variable price changes), and accelerated switching times, residential customers should be significantly better equipped to respond to unfavorable price changes on variable rate products. As ICEA noted above, these steps will allow residential customers to gather relevant information and—equally important—have a more efficient window of time to act on that information.

ICEA urges the Commission to not encumber Variable Non-Index products with burdensome information requirements that will not actually help consumers make an informed decision.

2. CUB's POR Proposal Would Strain (and Possibly Destroy) Aggregation Offerings and Dynamic Rate Offerings

No regulatory innovation has better allowed universal access to the benefits of the competitive retail market than Purchase of Receivables ("POR"). Indeed, it is quite likely that the significant levels of retail switching seen in Illinois would not have occurred absent the statutorily required offering of POR programs by Illinois' electric utilities. As noted in ORMD's 2014 Annual Report:

Under POR, an ARES is able to sell its receivables (the amount that customers owe to that ARES) to the utility at a discount. The POR requirement encourages alternative suppliers to offer their services to every utility customer rather than serve only those above certain credit thresholds, thereby furthering the statutory goal of an 'effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers.'

(ORMD 2014 Annual Report at 12.) The 2014 Annual Report further notes that: "virtually all suppliers are currently using UCB/POR for their residential customers" (*Id.* at 13.) Due to "all-or-nothing" rules in utility tariffs, which prevent RES from only assigning credit risk customers to POR, every single residential customer of suppliers using POR is receiving service utilizing the POR tariff.²

² See, e.g., ILL C.C. No. 10, 2nd Revised Sheet No. 403 (ComEd Rider PORCB) (emphasis added):

In making the election for the Company to purchase the receivables of the RES's electric power and energy supply service provided to retail customers, **if such RES elects for the Company to purchase the receivables of the RES's electric power and energy supply service provided to any residential retail customer then such RES must elect for the Company to purchase the receivables of the RES's electric power and energy supply service provided to all its residential retail customers.** With respect to any other retail customers, as applicable, such RES may elect for the Company to purchase the receivables of the RES's electric power and energy supply service provided to whichever retail customers it chooses.

See e.g., ILL. C.C. No. 1, Original Sheet No. 5.016 (Ameren UCB/POR):

POR is critically important to RES, in part because a RES may avoid the costs of: (1) a credit check, (2) filtering customers (whether acquired individually or through aggregation) with credit lower than the RES is willing to risk, and (3) separate collection agency costs (other than those passed through by the utility). POR has allowed RES to serve aggregation customers *en masse* and satisfy the universal access requirement of Section 1-92(b)(1) for opt-out aggregation. (See 20 ILCS 3855/1-92(b)(1).) Without POR, RES's ability to serve a wide range of customers on any type of product, including dynamic rates, would be severely hampered.

Nevertheless, CUB recommends that the Commission alter POR tariffs as follows:

[T]he Commission could condition service under the utility POR/UCB riders to specify that receivables purchased from suppliers will be limited to the Illinois Power Agency rate or default service rate, and that only amounts up to the Illinois Power Agency rate or default rate shall count as eligible charges for possible disconnection.

(CUB Reply Comments at 2.) As an initial matter, ICEA has concerns about the legal basis for CUB's contention, and does not agree with CUB's interpretation of Section 16-118 of the Public Utilities Act. Setting that issue aside for now, although CUB does not explain the timeframe during which this limit should occur, suppliers will be very reluctant (if at all willing) to offer dynamic rates to residential customers if the dynamic rates are capped at the utility default rate.³ ICEA notes that the default service rates are sometimes lower in the summer than in the non-summer months and designed to average hourly, daily, and monthly pricing effects—it is unrealistic to expect any dynamic or time-of-use product to come consistently below those numbers every single month. Generally speaking, all products that last longer than whatever

A RES must choose to either include all Residential Customers or exclude all Residential Customers in the UCB/POR Program (with the exception of Customers with accounts greater than 60 days in arrears).

³ ICEA notes that such a dynamic rate would not allow for price signals encouraging efficiency or demand response during the summer, because a customer ignoring those signals would be capped at the default service rate on the high end while potentially capturing savings when the hourly rate is lower in non-summer months.

timeframe CUB chooses will be subject to significant risk, destroying the value of longer-term products that some residential customers value.

ICEA further notes that because of the “all-or-nothing” requirement with residential customers would require RES to make a choice: offer dynamic rates but likely forego POR, or forego dynamic rates (or other rates that run a collection risk) and keep POR. Because, as noted above, aggregation customers are served under POR—and likely would not be served without POR, because of the universal access requirement—such a choice would likely preclude or severely restrict any offers of dynamic rates to opt-out aggregation customers. At a time when deployment of AMI and support from organizations including CUB has increased residential interest in dynamic products, it would be counterproductive to inhibit RES ability to offer those products.

Finally, ICEA notes that in years where the IPA holds a procurement, new default supply rates are often announced at best a few days before the beginning of the new supply period. Under CUB’s proposal, RES would face tremendous risk offering any rate (fixed or variable) before the RES knows the default rate—all without taking into account any effects of the PEA. Any supplier using POR would have to either (1) face significant risk, or (2) offer essentially 10-month products (or less, depending on the procurement schedule), because by the time default rates become available, it would take almost two months to even quickly acquire and switch new customers. Of course, it would create confusion for residential customers in the middle of their contract term with a supplier, whose product choice may be jeopardized by POR no longer being available.

For all of the foregoing reasons, CUB’s POR proposal would greatly harm the competitive retail market and likely take away the advantages of retail competition from

customers who have mediocre credit. It may also put a strain (or, at worst, destroy) aggregation offerings and dynamic rate offerings. ICEA strongly urges that CUB's proposal be rejected out of hand for its harmful effect on consumers.

3. CUB's Green Energy Proposal Provides Consumers with Irrelevant Information

Although it was raised in CUB's Initial Comments and not in CUB's Reply Comments, ICEA and other stakeholders were asked to respond to CUB's written and oral comments about tracking the amount of supply (electricity) that comes from renewable resources. (*See, e.g.*, CUB Initial Comments at 5.) CUB specifically requested that the PlugInIllinois website be modified as follows:

CUB proposes that there should be two columns added to the supplier offer matrix: one strictly for a % of actual renewable energy and one to indicate the % renewable energy credit. It is true the definition of "renewable energy resources" cited from the IPA Act above does define "renewable energy resources" as both the energy and the renewable energy credit (REC). CUB's suggestion here would not change that. CUB's proposed two column addition to the supplier offer matrix would simply provide more disclosure to the consumer as to what % of the supplier's "renewable energy offer" is renewable energy and what % is comprised of RECs.

(*Id.*) ICEA disagrees with CUB's recommendation.

As an initial matter, ICEA notes that for RPS compliance purposes, electricity from renewable resources without RECs is not eligible for RPS compliance. Section 455.120 of the Commission's Rules requires that a RES demonstrate compliance as follows:

If a RES seeks to comply with the RPS by generating electricity using renewable energy resources, purchasing electricity generated using renewable energy resources, or purchasing renewable energy credits, the only acceptable proof of compliance shall be in the form of verifiable documentation from PJM-GATS or M-RETS of the retirement of renewable energy credits associated with the production of electricity using renewable energy resources in accordance with Section 16-115D(a)(4) of the Act.

(83 Ill. Admin. Code § 455.120(b)(1).) In other words, electricity and RECs are not counted separately—only RECs can be used for compliance. A RES may purchase supply with the REC, but the REC itself (whether with or without the energy) must be used to demonstrate compliance. Stripped of the REC, the energy generated by any source—whether wind, coal, or any other source—is exactly the same from the customer perspective. Thus, the amount of electricity from a renewable generation facility is completely irrelevant.

In addition, ICEA notes that even eligible retail customers are not receiving physical supply from renewable facilities.⁴ The IPA has procured renewable resources from two sources: REC-only procurements and long-term PPAs procured in December, 2010 (the “LTPPAs”). The LTPPAs allow generators to sell their electricity into the grid, while the utilities provide a compensating payment or invoice based on the difference between average locational marginal prices and the contract price. (*See, e.g.*, ICC Docket No. 13-0546, Renewables Suppliers’ Application for Rehearing dated January 25, 2014, Exhibit 1.0 at 4:90-6:137.) Although eligible retail customers may be paying for energy from those facilities (located in Iowa, Indiana, and Illinois), there is no requirement that the energy be delivered to eligible retail customers or otherwise utilized in a way that would affect how much supply eligible retail customers receive from other sources.

Third, CUB claims that there are customer concerns about “renewable or green attributes” of supply. (*See* CUB Initial Comments at 5.) CUB describes its issue as follows:

CUB has heard from consumers who say that suppliers are not readily making available information regarding the “renewable” or “green” attributes of their supply. In one case, a consumer was referred by a supplier to information of ComEd’s generation mix when inquiring with a supplier about their offer. This is

⁴ As the stakeholders know, of course even with “physical delivery” all electrons are mixed together. However, ICEA notes the difference between a financial or swap product—where a generator sells into the grid and the buyer compensates/is compensated for the difference between the contractual price and the actual sales—and a physical deliver product, which is what RES must use in serving their residential (and other) customers.

highly problematic because, again, it fails to comply with the requirement that the prices, terms and conditions of the products and services be adequately disclosed.

(*Id.*) ICEA strongly disagrees that the response described by CUB is “highly problematic”; ICEA’s members (like the IPA) may legitimately not know the source of the energy they buy for delivery to consumers. For example, the IPA procures block products during its standard product procurement—the IPA and stakeholders have no idea whether any given block will be fulfilled by coal, solar, nuclear, wind, burning of black liquor, or some ever-shifting combination thereof. Although RES (unlike the IPA) may enter into unit-contingent contracts as a matter of normal course, RES may also procure block supply from the market from brokers that are not unit-specific. Thus, the response by a RES to a consumer about renewable mix is not “highly problematic” as CUB suggests absent additional information about the RES’s marketing claims—in fact, it was more likely the RES giving an honest answer.

For these and other reasons, ICEA did not respond to CUB’s recommendation in ICEA’s Reply Comments because ICEA was confused about what CUB is trying to accomplish. ICEA is happy to respond to any rationale CUB may have for requiring the additional column, especially what behavior CUB is trying to incentivize and what added benefits there would be for identifying the source of electricity.

B. Response to RESA

Although RESA notes that it is in substantial agreement with many of ICEA’s positions it disagrees on product definitions and ICEA’s One Star RES proposals. (*See* RESA Reply at 5-6.) In the abstract, ICEA sympathizes with RESA’s argument that “the terms ‘fixed’ and ‘variable’ are clear.” (RESA Reply at 5.) However, once RESA proposes definitions consistent with the natural gas retail market, it becomes more clear that the subtleties that ICEA attempted to capture with its definitions are not captured in the natural gas definitions. More specifically and as

explained in greater detail above, ICEA proposed the definitions in part to facilitate the guiding principle it noted above: either provide a formula for the price or provide sufficient advance notice of the price (or changes thereto). Although the RESA definitions would likely provide some clarity for consumers, the definitions do not facilitate implementing the consumer notification principle that ICEA provided. For that reason, ICEA respectfully disagrees with RESA's suggested use of the natural gas definitions.

ICEA appreciates RESA's response to ICEA's One Star ARES proposal. (*See* RESA Reply at 6.) ICEA's responses to RESA's four points are as follows:

- With regard to other measures of supplier performance besides complaints (such as the Better Business Bureau), nothing would prevent the program that is ultimately implemented from allowing the Commission to take into account other factors in determining whether to impose a remediation plan or what the contents of that remediation plan should be.
- With regard to which suppliers the scorecard skews for or against, ICEA is unaware of any skew in the results based on method of customer acquisition. ICEA is open to further discussion about why that might be and potential solutions.
- With regard to RESA's concern of a "never-ending process" because there will always be one-star RES, ICEA acknowledges this issue but further anticipates that as RES with consistent one-star ratings improve their processes, there are less likely to be RES who remain at the one-star level over a long period of time. However, ICEA is not opposed to further discussions about how to recognize absolute improvement in consumer complaint matters across the market.
- With regard to the complaint scorecard having an overly broad definition of "complaint," ICEA agrees and noted that this should be evaluated by the Commission in determining whether a RES needs a remediation plan. (*See, e.g.,* ICEA Initial Comments at 30 n.2.)

C. Response to NEMA/CES

Although the Reply Comments of NEMA/CES go into considerably more detail and with more subtlety, it appears that, aside from accelerated switching, NEMA/CES recommend against most (if not all) substantive changes regarding product definition and ICEA's One Star RES proposal. (*See, e.g.,* NEMA/CES Reply Comments at 9-10 (green product and fixed/variable

definition), 12 (accelerated switching), 13-14 (ICEA One Star proposal).) As noted above, ICEA agrees with RESA and NEMA/CES's position in Reply Comments that there is substantial danger in over-regulating products in a way that stifles competition. ICEA also agrees that there is a difference between isolated customer complaints (especially due to non-compliance with legal requirements) and systemic market problems. Nevertheless, ICEA believes that the product definitions and One Star ARES proposals will provide residential customers with better information that—along with accelerated switching—will provide consumers with a better ability to act on that information and take advantage of the myriad options in the retail competitive market.

With regard to the One Star ARES proposal specifically, NEMA/CES makes similar arguments to RESA, which are addressed above. In addition, NEMA/CES argues that: “However, using the PlugInIllinois RES Complaint Scorecard as the basis for Commission action does not afford a RES with due process and a fair opportunity to be apprised of the underlying incidents and inquiries forming the basis of the one star rating.” (NEMA/CES Reply at 13.) ICEA is confused by this response; as ICEA noted when describing its proposal, the RES Complaint Scorecard is the impetus for initiating an inquiry, not the only evidence to be considered in adjudicating such an inquiry. (*See* ICEA Initial Comments at 31 (noting that the remedial action plan proceeding will be an adjudicated proceeding).) In addition, ICEA also noted in its Initial Comments and in response to RESA above that the nature of the “complaints” (which may or may not comport with the plain language use of “complaint”) would have to be investigated before assigning a remediation plan.

III.

CONCLUSION

ICEA appreciates the opportunity to share its views in this matter, and is looking forward to more discussion of the third-round comments at the next ORMD workshop. ICEA hopes that the additional discussion of the principles underlying ICEA's recommendations will help move the conversation forward on these matters.

January 8, 2015